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IN THE COURT OF APPEALS OF INDIANA

TYRON LAVAR JOHNSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A03-0610-CR-484
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Salvador Vasquez, Judge
Cause Nos. 45G01-0601-FA-7,
45G01-0601-FA-8, 45G01-0601-FB-7

June 22, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Tyron Johnson appeals his sentence of thirty-five years for his convictions for Class A felony robbery and Class A felony burglary. We affirm.

Issue

Johnson's sole restated issue on appeal is whether his sentence is appropriate.

Facts

On January 3, 2006, Johnson entered Sharon Diehl's garage and forcibly took her purse, causing her to fall to the ground. Diehl suffered bruises to her thigh and arm, and she later experienced a problem with her vision that her doctor indicated was due to a detached vitreous.

On January 17, 2006, Johnson and a friend kicked in the door of 93-year-old Betty Coner's residence. Johnson served as a lookout while his friend struck Coner and forcibly took money from her.

On January 20, 2006, Johnson entered Patti Jo Krajewski's garage. He was holding a handgun as he pushed Krajewski to the ground, grabbed her purse, and fled. She suffered bruising and swelling to her face and head. Later that day, Officer Peter Sornaz of the Gary Police Department observed a vehicle, driven by Johnson, swerving across the center line. Officer Sornaz pulled over the vehicle and eventually asked Johnson to get out. After getting out of the vehicle, Johnson lunged for Officer Sornaz's firearm. While they were struggling, Johnson pulled the trigger and fired a shot into the ground.

On January 21 and 24, 2006, the State filed three sets of charges against Johnson for Class A felony attempted murder, Class A felony burglary, two counts of Class A felony robbery, Class B felony robbery, Class B felony confinement, three counts of Class C felony battery, Class C felony intimidation, Class D felony battery, Class D felony possession of stolen property, Class A misdemeanor resisting law enforcement, and Class A misdemeanor carrying a handgun without a license.

Pursuant to a plea agreement, Johnson pled guilty to one count each of Class A felony robbery, Class A felony burglary, Class B felony robbery, and Class C felony intimidation. The State dismissed the other ten charges and agreed to a sentencing cap of thirty-five years.

The trial court sentenced Johnson to thirty-five years for Class A felony robbery, thirty-five years for Class A felony burglary, thirteen years for Class B felony robbery, and six years for Class C felony intimidation, to be served concurrently. Johnson now appeals.

Analysis

Johnson argues that his sentence is inappropriate in light of the nature of the offense and his character under Indiana Appellate Rule 7(B). Johnson committed these offenses after our legislature replaced the "presumptive" sentencing scheme with the present "advisory" sentencing scheme. We are awaiting guidance from our supreme court as to how appellate review of sentences under the new "advisory" scheme should proceed and whether trial courts had to issue sentencing statements explaining the

imposition of any sentence other than an advisory sentence. See Gibson v. State, 856 N.E.2d 142, 146-47 (Ind. Ct. App. 2006).

Sentencing statements are very helpful to this court in determining the appropriateness of a sentence under Indiana Appellate Rule 7(B). Gibson, 856 N.E.2d at 147. The trial court here issued a sentencing statement, and we will utilize it in determining whether the sentence imposed here was inappropriate. Id. Under Indiana Appellate Rule 7(B), we may revise a sentence that we conclude is inappropriate in light of the nature of the offense and the character of the offender. We perform this review while considering the findings made by the trial court in its sentencing statement. We understand that this is, by necessity, part of our analysis here, but it does not limit the matters we may consider. See Gibson, 856 N.E.2d at 149; see also McMahon, 856 N.E.2d at 750 (noting that review under Rule 7(B) is not limited "to a simple rundown of the aggravating and mitigating circumstances found by a trial court.").

In issuing its sentencing statement, the trial court found as aggravating factors Johnson's prior juvenile adjudications and that the current offenses affected four different victims, three of whom were women. The court found as mitigating factors that he pled guilty and acknowledged responsibility for his actions. The court found that the aggravating circumstances outweighed the mitigating circumstances and sentenced Johnson to the maximum under the plea agreement, thirty-five years.

Johnson argues that it was improper for the trial court to take the victims into account as an aggravating factor, because the presence of a victim is an essential element of each conviction. The nature and circumstances of a crime are proper aggravators

provided that the trial court takes into consideration facts not needed to prove the elements of the offense. McCoy v. State, 856 N.E.2d 1259, 1263 (Ind. Ct. App. 2006). The trial court stated that it was considering as an aggravator that Johnson's offenses resulted in the victimization of four different people, and in three of the offenses, he was "picking on females." Sentencing Tr. p. 10. These are facts and circumstances of the case that are not essential elements of each crime. Additionally, we have held that the existence of multiple victims can be a valid aggravator. See French v. State, 839 N.E.2d 196, 197 (Ind. Ct. App. 2005), trans. denied.

Johnson also argues that the trial court's consideration of his criminal history as an aggravator was inappropriate because the instant offenses are his first felonies, his juvenile adjudications did not constitute "a significant criminal history," and "considering his age," there was a substantial period of time between the last adjudication and the current offense. The significance of a defendant's prior criminal history varies based upon the gravity, nature, and number of prior offenses as they relate to the current offense. Edmonds v. State, 840 N.E.2d 456, 461 (Ind. Ct. App. 2006), trans. denied. As a juvenile, Johnson was adjudicated at age fifteen for battery and at age seventeen for receiving stolen parts, resisting law enforcement, and fleeing law enforcement. He committed the instant offenses at age twenty-two. Although Johnson's criminal history is not extensive, the juvenile adjudications are of some significance now because they involved battery and resisting arrest. The current offenses are similar, in that Johnson admitted to causing Diehl to fall on the ground, pushing Krajewski to the ground, and shooting a police officer's firearm while trying to grab it. We conclude that it was not

inappropriate for the trial court to consider his juvenile history as an aggravating factor in light of the circumstances of his current offenses.

Johnson contends that the trial court erred by failing to find his remorse as a mitigating factor because his remorse was significant and supported by the record. "Remorse, or lack thereof, by a defendant often is something that is better gauged by a trial judge who views and hears a defendant's apology and demeanor first hand and determines the defendant's credibility." Gibson, 856 N.E2d at 148. Although Johnson apologized to his victims at the hearing, the trial court later stated: "[E]very once in a while I'll get someone with a smirk on their face and, you know what, it's [that] you got caught. I agree with the [S]tate to the extent that I believe that you feel remorseful because you got caught." Sentencing Tr. p. 26. We will not disturb the trial court's assessment of Johnson's credibility.

Johnson urges us to consider his remorse, his youth, his desire to support his two children, and his guilty plea as positive evidence of his character in reviewing his sentence under Indiana Appellate Rule 7(B). However, we must also consider the nature of the offenses. Johnson confronted two women in their garages and forcibly stole their purses. He entered a 93-year-old woman's home and served as a lookout while his friend struck the woman and took money from her. He lunged at a police officer and attempted to take his firearm, causing a shot to be fired into the ground. We conclude that a thirty-five year sentence is not inappropriate in light of the nature of the offenses.

Alternatively, Johnson asks us to suspend a portion of his sentence so that he can have a better opportunity to obtain a job and support his children. Johnson reminds us

that the penal code is founded on principles of reformation. Ind. Const. Art. 1, § 18. We note that Section 18 applies to the penal code as a whole and not to individual sentences. Scruggs v. State, 737 N.E.2d 385, 387 (Ind. 2000). We review a trial court's decision not to suspend a sentence for abuse of discretion. Ables v. State, 848 N.E.2d 293, 296 (Ind. Ct. App. 2006). A trial court has abused its discretion if "the decision is clearly against the logic and effect of the facts and circumstances." Id. (citing Pierce v. State, 705 N.E.2d 173, 175 (Ind. 1998)). Johnson committed four serious offenses in less than three weeks. He received concurrent sentences of thirty-five years, which, although the maximum under his plea agreement, were well below the Class A felony maximum of fifty years and the even greater maximum he could have received if the court had imposed consecutive sentences. We cannot conclude that the trial court abused its discretion by failing to suspend any of Johnson's thirty-five year sentence.

Conclusion

Johnson's thirty-five year sentence was not inappropriate in light of his character and the nature of the crime. The trial court did not abuse its discretion by failing to suspend any of Johnson's sentence. We affirm.

Affirmed.

NAJAM, J., and RILEY, J., concur.